

ORIGINAL

**BEFORE THE BOARD OF REAL ESTATE APPRAISERS**

**STATE OF IDAHO**

In the Matter of the License of:	)	
	)	Case No. REA-2005-6
JOHN A. SWALLOW,	)	
License No. LRA-170,	)	<b>STIPULATION AND</b>
	)	<b>CONSENT ORDER</b>
Respondent.	)	
_____		
REASwallow\P52411sa		

WHEREAS, information having been received by the Idaho State Board of Real Estate Appraisers (hereinafter the "Board") which constitutes sufficient grounds for the initiation of an administrative action against John A. Swallow (hereinafter "Respondent"); and

WHEREAS, the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner; now, therefore,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

**A.**

1. The Board may regulate the practice of real estate appraising in the State of Idaho in accordance with title 54, chapter 41, Idaho Code.
2. Respondent John A. Swallow is a licensee of the Idaho State Board of Real Estate Appraisers and holds License No. LRA-170 to practice real estate appraising in the State of Idaho. Respondent's license is subject to the provisions of title 54, chapter 41, Idaho Code.
3. Appraisals in the State of Idaho must comply with the minimum standards set forth in the Uniform Standards of Professional Appraisal Practices ("USPAP").
4. On or about August 11, 1999, Respondent prepared an appraisal report for a manufactured home and property located at 2076 N. Kootenai Road in Sandpoint, Idaho

(the "Subject Property").

5. Respondent's appraisal report for the Subject Property failed to meet the following requirements of USPAP Standards (1999):

a. The appraisal failed to address railroad tracks directly across the street from the Subject Property and failed to address drainage in an area that has severe issues with drainage and a very high water table.

b. The appraisal did not recognize that the Subject Property's manufacturer generally has problems with quality, service, and lower than typical retail/wholesale prices. In addition, the lack of manufactured home resale activity indicated that this housing type has less marketability and appeal than a traditionally built home, but the appraisal failed to make adequate adjustments for marketability.

c. In the cost approach, Respondent failed to use appropriate land sales, and Marshall and Swift/NADA figures were actually much less than those used in the report.

d. Gross adjustments for Comparable #1 were 80% of the sales price and net adjustments were 47.6% of the sales price, and the adjustment for lot size exceeded typical adjustments without adequate support.

e. Comparable #2 indicated a superior view than the Subject Property, but no adjustment was made and there was no marketability adjustment for the subject design of a manufactured home versus a conventionally built home. Comparable #2 is much older and not similar in appeal or marketability to the Subject Property.

f. The adjustments in the conventionally built comparables were not appropriate and did not accurately reflect the difference in marketability between a manufactured home and a conventionally built home.

g. Comparable #4 failed to adjust for the quality of a Fuqua home versus the subject Liberty, and no adjustment was made for the superior territorial view.

6. The above-stated allegations, if proven, would constitute a violation of the

laws and rules governing the practice of real estate appraising, specifically Idaho Code § 54-4104(14), IDAPA 24.18.01.700 and USPAP (1999) Standards 1-1(a), 1-1(c), 1-1(f) and 1-4(b). Violations of these laws and rules would further constitute grounds for disciplinary action against Respondent's license to practice real estate appraising in the State of Idaho.

7. Respondent, in lieu of proceeding with a formal disciplinary action to adjudicate the allegations as set forth above, hereby agrees to the discipline against his license as set forth in Section C below.

**B.**

I, John A. Swallow, by affixing my signature hereto, acknowledge that:

1. I have read the allegations pending before the Board, as stated above in section A. I further understand that these allegations constitute cause for disciplinary action upon my license to practice real estate appraising in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses; the right to present evidence or to call witnesses, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of real estate appraising in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process based upon the above allegations.

**C.**

Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and order upon this stipulation whereby:

1. Respondent shall pay to the Board an administrative fine in the amount of

One Thousand and No/100 Dollars (\$1,000.00) within sixty (60) days of the entry of the Board's Order.

2. Respondent shall pay investigative costs and attorney fees in the amount of One Thousand One Hundred Eighty and No/100 Dollars (\$1,180.00) within sixty (60) days of the entry of the Board's Order.

3. Respondent shall take a market analysis course focusing on the market differences of manufactured homes within six (6) months from the date of entry of the Board's Order, or if Respondent chooses to go on inactive status during said six (6) month period, Respondent shall take the aforementioned course within six (6) months after his status becomes active, and shall take and pass any examinations given at the conclusion of the course. Respondent shall obtain Board approval prior to taking the course and shall submit proof of attendance and proof that he passed any given examinations within 30 days of attendance. If no examinations were given at the conclusion of the class, Respondent shall submit a letter from the course instructor stating that no examinations were given. Said continuing education shall be included in any continuing education Respondent is required to obtain to maintain his license.

4. Respondent's License No. LRA-170 shall be placed on probation for a period of six (6) months. The conditions of probation are as follows:

a. Respondent shall comply with all state, federal and local laws, rules and regulations governing the practice of real estate appraising in the State of Idaho.

b. Respondent shall inform the Board in writing of any change of place of practice or place of business within 15 days of such change.

c. In the event Respondent should leave Idaho for three (3) continuous months, or to reside or practice outside of the state, Respondent must provide written notification to the Board of the dates of departure, address of intended residence or place of business, and indicate whether Respondent intends to return. Periods of time spent outside Idaho will not apply to the reduction of this period or excuse compliance with the

terms of this Stipulation.

d. Respondent shall fully cooperate with the Board and its agents, and submit any documents or other information within a reasonable time after a request is made for such documents or information.

e. Respondent shall make all files, records, correspondence or other documents available immediately upon the demand of any member of the Board's staff or its agents.

5. At the conclusion of the six-month probationary period and provided Respondent has complied with the requirements of this Stipulation, including the requirements set forth in Paragraph C(3) above, Respondent may request from the Board reinstatement of License No. LRA-170 from probationary status. Any request for reinstatement of License No. LRA-170 from probationary status must be accompanied by written proof of compliance with the terms of this Stipulation as set forth herein. The Board retains discretion to grant reinstatement of Respondent's license or to deny reinstatement and continue the period of probation.

6. All costs associated with compliance with the terms of this stipulation are the sole responsibility of Respondent.

7. The violation of any of the terms of this Stipulation by Respondent will warrant further Board action. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this Stipulation.

**D.**

1. It is hereby agreed between the parties that this Stipulation shall be presented to the Board with a recommendation for approval from the Deputy Attorney General responsible for prosecution before the Board at the next regularly scheduled meeting of the Board.

2. Respondent understands that the Board is free to accept, modify with Respondent's approval, or reject this Stipulation, and if rejected by the Board, a formal

complaint may be filed against Respondent. Respondent hereby agrees to waive any right Respondent may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this Stipulation is rejected.

3. If the Stipulation is not accepted by the Board, it shall be regarded as null and void. Admissions by Respondent in the Stipulation will not be regarded as evidence against Respondent at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

5. Any failure on the part of Respondent to timely and completely comply with any term or condition herein shall be deemed a default.

6. Any default of this Stipulation and Consent Order shall be considered a violation of Idaho Code § 54-4107. If Respondent violates or fails to comply with this Stipulation and Consent Order, the Board may impose additional discipline pursuant to the following procedure:

a. The Chief of the Bureau of Occupational Licenses shall schedule a hearing before the Board. Within twenty-one (21) days after the notice of hearing and charges is served, Respondent shall submit a response to the allegations. If Respondent does not submit a timely response to the Board, the allegations will be deemed admitted.

b. At the hearing before the Board upon default, the Board and Respondent may submit affidavits made on personal knowledge and argument based upon the record in support of their positions. Unless otherwise ordered by the Board, the evidentiary record before the Board shall be limited to such affidavits and this Stipulation and Consent Order. Respondent waives a hearing before the Board on the facts and substantive matters related to the violations described in Section A, and waives discovery, cross-examination of adverse witnesses, and other procedures governing administrative hearings or civil trials.


c. At the hearing, the Board will determine whether to impose

additional disciplinary action, which may include conditions or limitations upon Respondent's practice or suspension or revocation of Respondent's license.

7. This Stipulation and Consent Order contains the entire agreement between the parties, and Respondent is not relying on any other agreement or representation of any kind, verbal or otherwise.

I have read the above stipulation fully and have had the opportunity to discuss it with legal counsel. I understand that by its terms I will be waiving certain rights accorded me under Idaho law. I understand that the Board may either approve this stipulation as proposed, approve it subject to specified changes, or reject it. I understand that, if approved as proposed, the Board will issue an Order on this stipulation according to the aforementioned terms, and I hereby agree to the above stipulation for settlement. I understand that if the Board approves this stipulation subject to changes, and the changes are acceptable to me, the stipulation will take effect and an order modifying the terms of the stipulation will be issued. If the changes are unacceptable to me or the Board rejects this stipulation, it will be of no effect.

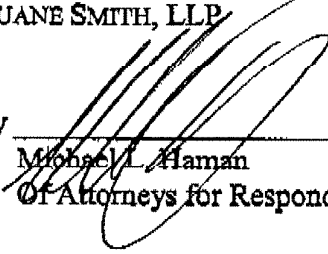
DATED this 13 day of October, 2005.

  
\_\_\_\_\_  
John A. Swallow  
Respondent

I concur in this stipulation and order.

DATED this 13 day of October, 2005.

QUANE SMITH, LLP

By   
\_\_\_\_\_  
Michael L. Haman  
Of Attorneys for Respondent

I concur in this stipulation and order.

DATED this 14<sup>th</sup> day of October, 2005.

STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL

By 

Stephanie N. Guyon  
Deputy Attorney General

**ORDER**

Pursuant to Idaho Code § 54-4106, the foregoing is adopted as the decision of the Board of Real Estate Appraisers in this matter and shall be effective on the 17<sup>th</sup> day of October, 2005. **IT IS SO ORDERED.**

IDAHO STATE BOARD  
OF REAL ESTATE APPRAISERS

By 

Henri LeMoyne, Chair



### CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17<sup>th</sup> day of October, 2005, I caused to be served a true and correct copy of the foregoing by the following method to:

John A. Swallow  
421½ Sherman Avenue, Suite 208  
Coeur d'Alene, ID 83814


- ☒ U.S. Mail
- ☐ Hand Delivery
- ☒ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Michael L. Haman  
QUANE SMITH LLP  
P.O. Box 1758  
Coeur d'Alene, ID 83816-1758

- ☒ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☐ Statehouse Mail

Stephanie N. Guyon  
Deputy Attorney General  
P.O. Box 83720  
Boise, ID 83720-0010

- ☐ U.S. Mail
- ☐ Hand Delivery
- ☐ Certified Mail, Return Receipt Requested
- ☐ Overnight Mail
- ☐ Facsimile: \_\_\_\_\_
- ☒ Statehouse Mail

  
Rayola Jacobsen, Chief  
Bureau of Occupational Licenses